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## **Saving the Polar Bear, Saving the World: Can the Capabilities Approach do Justice to Humans, Animals *and* Ecosystems?**

In political theory, if not in practice, the protective sphere of justice is rapidly expanding. Abandoning the Rawlsian prerequisite of co-citizenship, cosmopolitans have defended the claims of those humans with whom we share a world but not a country. Some theorists have pushed the boundaries further still, among them Martha Nussbaum (2006) who has expanded her version of the capabilities approach not only to demand justice for those outside our borders but also to account for the claims of those within them who are not ‘fully cooperating members of society’ (Rawls 1993, p. 3). These include sentient nonhuman animals. David Schlosberg (2007) has gone beyond even this. He argues that the capabilities approach can be broadened to include the claims of justice not only of individual animals, but also of entire species and ecosystems.

This is an attractive prospect: a happy marriage of social, environmental and ecological justice, which also respects the claims to flourishing of *individual* nonhuman animals. But is it also too good to be true? Can the capabilities approach really deliver? I would like to think it can, but there are serious obstacles to the project as it stands. The purpose of this paper is to highlight these difficulties and tentatively to consider how the capabilities approach might move beyond them.

I will begin by briefly introducing the capabilities approach and Nussbaum’s and Schlosberg’s expanded models. I will not attempt to defend the approach in general. Nor will I defend their projects against claims that justice should not be extended beyond the human at all. These questions have both been debated in detail elsewhere.<sup>1</sup> Nor, finally, will I explicitly consider or reject rival theories (such as utilitarianism) as more appropriate models of justice to nonhumans.<sup>2</sup> Instead, I will highlight four main obstacles to an expanded capabilities model. Three concern the potential for conflicting claims: of humans and the nonhuman world, of individual nonhuman animals, and of individual nonhuman animals and species or ecosystems. The fourth casts doubt on the whole project of doing justice to ecosystems. I will argue that the capabilities approach,

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<sup>1</sup> On the capabilities approach, see for example: Nussbaum 2000; Sen 1992 and 1999. On justice to nonhuman animals, see for example: Nussbaum 2006, pp. 326-66; Regan 1983; Singer 1974. On ecological justice, see for example: Baxter 2005; Schlosberg 2007, pp. 129-60.

<sup>2</sup> For a discussion of this point, see Nussbaum 2006, pp. 326-46

as expanded by Nussbaum and again by Schlosberg, can overcome the first of these by biting a fairly controversial bullet, but that the rest remain intractable.

Indeed, I will argue that this problematic result is in fact unsurprising once it is pointed out that the nonhuman world, understood as including individual animals as well as species and ecosystems, lies outside the circumstances of justice as standardly applied to human society. Finally, I will speculate briefly on how the approach might move beyond this impasse.

### **Capabilities and flourishing**

On the capabilities model, if we want to know how well individual human lives are going we should ask whether those individuals have a genuine opportunity (capability) to function in certain key human ways. These capabilities are then taken to be the appropriate metric for distributional justice. Nussbaum (2000, pp.78-80), on whose version this paper will focus, offers the following provisional list of central functionings, each of which we are supposed to be owed at least some threshold level of capability to achieve: Life; Bodily health; Bodily integrity; Senses, imagination and thought; Emotions; Practical reason; Affiliation; Other species; Play; and Control over one's environment, both (a) Political and (b) Material.

Nussbaum (2000, p. 5) is explicitly Rawlsian in that she presents the capabilities as 'the object of an *overlapping consensus* among people who otherwise have very different comprehensive conceptions of the good'.<sup>3</sup> However, unlike Rawls, Nussbaum (2006) defends the expansion of the sphere of distributive justice beyond state borders. Accusing the contractualists of conflating rule-makers with those for whom those rules are made, she also defends the expansion of capabilities-based justice to those humans who can never be fully cooperating members of a contractualist society. Finally, she expands it to include sentient nonhuman animals.

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<sup>3</sup> See Rawls 1993 for an extensive discussion of overlapping consensus.

### ***Protecting the tender gazelle: Justice to individual animals***

It is easy to see this as a natural next step. If anything is uncontroversial, it is that the flourishing of an individual human life has moral value. But once flourishing is seen to involve more than the exercise of human *rationality*, we have a philosophical basis for what seems already obvious: nonhuman animals, like us, can flourish or not flourish. Their lives can go well or badly. If we have entitlements to be treated in certain ways, based on our capability to function in corresponding central ways, then it is at least plausible that nonhuman animals, who share many of those capabilities, have entitlements of their own. Nussbaum (2006, pp. 325-352) defends this position by appeal to areas of commonality and interaction between humans and nonhuman animals, as well as to the latter's capacity for a dignified existence. She also defends the capabilities approach as better placed to accommodate our duties to nonhuman animals than existing utilitarian accounts or the Rawlsian contractualist view, which assigns only duties of 'compassion and humanity' (Rawls 1971, p. 448).

On Nussbaum's expanded model, individual sentient nonhuman animals, like individual humans, are the focus of our legitimate (moral and political) concern. But the sphere of justice ends there. That is not to say that species, or at least subgroups within species, do not play an important role in facilitating individual flourishing: 'for animals, as for humans, the existence of suitable groups and communities is an important part of the flourishing of individuals' (Nussbaum 2006, p. 357).<sup>4</sup> However, the flourishing of a species is not, *in itself*, a matter of justice. Extinction of a species is an injustice only because (and only if) that species is becoming extinct through the killing of its individual members and the destruction of their habitats. Moreover, although Nussbaum (2006, pp. 361-2) denies that the capacity to feel pleasure and pain is the only morally

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<sup>4</sup> Indeed, in emphasising affiliation and defining flourishing 'around species norms', Nussbaum (2006, p. 363) is able to accommodate the relational component of human (and animal) interests highlighted by Diamond (1978) and Anderson (2004) in their rejections of Singer's (1974) argument from marginal cases.

and politically relevant nonhuman animal capacity, she follows Singer in setting sentience as the threshold for considerations of justice.<sup>5</sup>

As with humans, she argues that justice for nonhumans requires the securing of some threshold level of capabilities for all. Nussbaum (2006, pp. 393-401) draws up a tentative list, based on her list of ten central human capabilities, which cannot be traded off against one another. In the process, she outlines some practical implications. The killing of sentient nonhuman animals for sport or luxury items is ruled out, as are ‘all cruel practices and painful killings in the process of raising animals for food’. (She doesn’t advocate abandoning meat eating altogether.) Similarly, nonhuman animals under human control should not be deprived of a healthy life or bodily integrity. They are entitled to free movement and access to sources of pleasure, to form attachments to one another, to the opportunity for a variety of activities, to play, to be respected by the political framework in which they exist, and to have their habitats protected.

Clearly, this would necessitate huge changes in human behaviour. But Nussbaum (2006, pp. 366-80) goes further, suggesting that not only human-animal but also animal-animal interaction might appropriately be governed by justice. Nature, she points out, is cruel. Nonhuman animals are harmed not only by humans but also by each other. The tiger will crunch on the ‘tender gazelle’. As with the human capabilities, there is a moral element to Nussbaum’s list: she believes that harm-causing capabilities of nonhuman animals should not be accorded political and social protection. That is not to say that the tiger’s predatory capacity should be ignored altogether; rather she wants to strip it of its harmful element and fulfil it in some other way. She cites the Bronx Zoo, which has provided its tiger with a ball on a rope, and the games we encourage our pet cats to play (for example, chasing paper on a string) whilst discouraging them from hunting mice and birds. Nor does she rule out this ‘intelligent, respectful paternalism’ when it comes to nonhuman animals in the “wild”. She argues that intervention to

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<sup>5</sup> Nussbaum (2006, p. 362) does not deny outright that ‘wanton’ killing even of mosquitoes could be an injustice, but signs off the topic by noting that ‘we have enough on our plate if we focus for the time being on sentient creatures’.

protect the gazelle from the tiger and painless population control rather than the crueller natural version could be justified if such changes could be introduced without doing more harm than good to individual nonhuman animals.<sup>6</sup>

***Functioning as being crunched: Justice to species and systems***

Schlosberg (2007, pp. 142-157) regards Nussbaum's proposals as too modest. The capabilities approach, he says, 'could enrich ecological justice by bringing recognition to the flourishing of *systems* as a whole *as well* as the individual animals Nussbaum includes'. He accuses Nussbaum of being 'quite biased towards sentient and even self-conscious animals – not much of a progression beyond some of the contractualists she criticises'. He does not offer a rival capabilities list, but rejects her starting point of the list for humans in favour of appeal to the ways of life of species and ecosystems.

Schlosberg (2007, p. 148) makes two related points. Firstly, he appeals to the fact that species and ecosystems, as well as individual nonhuman animals, have their own claim to recognition and their own capacity to flourish in their own way. Systems are 'living entities with their own integrity; atomising nature into isolated animals devalues a form of life, and the way that this form of life flourishes'. Secondly, he argues that it doesn't make sense to consider the flourishing of individual animals (human or otherwise) in isolation: 'It is simply not possible to talk about the flourishing of individual animals without reference to the environment in which this flourishing is to occur.' Nussbaum, as we have seen, would not deny this second point but she would not, as he does, defend *direct* duties to these species or ecosystems.

In keeping with his wider focus, Schlosberg (2007, pp. 151-2) rejects Nussbaum's idea (2006, p. 379) that we 'police the animal world, protecting vulnerable animals from predators'.<sup>7</sup> Echoing the furore over Knut, the polar bear cub rejected by his mother in Berlin zoo, he argues that, even within zoos, such sanitisation of the

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<sup>6</sup> See Cowan (2003) for an alternative defence of "policing nature".

<sup>7</sup> Schinkel (2008, pp.49-50) also criticises Nussbaum's proposal, noting that it would mean 'the end of the natural world as we know it'.

capabilities of nonhuman animals as giving the ball to the tiger is the result of human discomfort and precisely what renders us ‘incapable of fully understanding species-based capabilities’.<sup>8</sup> His point is not simply that Nussbaum is wrong about the true nature of flourishing as a tiger, but also that she has too narrow a view of what it means to flourish as a gazelle.

If the question is the simultaneous protection of the tiger’s prey... we need to understand and accept that part of the flourishing of animals is to be the protein for other life forms. All flourishing is not a pretty version of harmony; some is not-so-pretty, but nonetheless harmonious. To be food for others is the essence of functioning for some beings. Acorns can become oak trees, or they may become squirrel food; gazelles can breed in social units, or may become tiger food. Either direction represents a particular form of flourishing, so long as one recognises that flourishing happens in systems, with creatures in relation with one another. (Schlosberg 2007, p. 151)

### **Conflicting claims**

If Schlosberg is right, the capabilities approach provides not only a theory of social justice and justice to individual nonhuman animals but also a broader model of ecological justice. Unfortunately, however, it is not at all clear that it is possible to achieve all these aims at once. This section will consider four obstacles. The first, the persistently conflicting claims of human and nonhuman subjects of justice, is the exception in being largely theoretically resolvable. Although presented primarily via engagement with Nussbaum, it constitutes a challenge to any theorist attempting to expand capabilities-based justice beyond the human. The second difficulty is a more enduring one for both Nussbaum and Schlosberg: widespread conflict between the capabilities claims of different individual animals. The third obstacle, the incompatibility of the capabilities entitlements of nonhuman animals and those of

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<sup>8</sup> Animal rights activist Frank Albrecht argued that raising Knut by hand was “not appropriate to the species but rather a blatant violation of animal welfare laws” because he would become dependent on humans and unable to function as a bear (Thadeusz 2007). This theory seems to have been borne out by experience: within a year, zoologist Peter Arras had described Knut as a psychopath (Paterson 2008).

species or ecosystems, is a problem specifically for Schlosberg's wider approach, as is the fourth: the nebulousness of the notion of an "ecosystem".

### *Us and them*

The first question is whether justice can be done to nonhumans whilst maintaining just *human* institutions? Here, despite appearances, there is scope for optimism. Within this broad topic, I will highlight three difficulties and sketch how each might be resolved.

The first difficulty relates to a specific feature of Nussbaum's version of the capabilities approach. Her expanded account seems to have a clear-cut answer to some questions of animal treatment, for example that nonhuman animals not be sacrificed for luxury goods or blood "sports". It is plausible, although Nussbaum (2006, pp. 393-4) refrains from saying so, that justice to sentient nonhuman animals would require refraining from killing them for food, or even from consuming animal products.<sup>9</sup> Without the scope to discuss this fully, I point only to the healthiness and potential for variety in a vegetarian diet, as indicating that it does not preclude a fully flourishing human life, and to the environmental benefits, as indicating that a much lower meat diet may in fact be required to do full justice to humans including future generations.

However, numerous cases are made for maintaining cruel practices on the grounds of cultural significance. Halal and kosher slaughter are obvious cases; others include bull fighting or Santeria sacrifice. Parallel claims might be made for practices threatening the survival of species or ecosystems as a whole. Consider, for example, the threat both to individual sentient animals and to species posed by Japanese or Icelandic whaling. The point is not that these cultural practices might be claimed as central to individuals' conceptions of the good: parallel arguments to Paula Casal's (2003) and Brian Barry's (2001, pp. 295-305) could be used to refute such lines of defence. Rather, the difficulty is that Nussbaum presents her list of capabilities as one on which there

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<sup>9</sup> Schinkel (2008) argues that Nussbaum is inconsistent with her own approach in retaining the possibility of killing animals for food. For a utilitarian defence of vegetarianism, see Singer 1974. For a rights-based defence, see Regan 1983, esp. pp. 330-353. For a discussion of the moral problems of adopting vegetarianism but not veganism, see Deckers 2009.



could be overlapping consensus among those subjects of justice who are capable of consenting, i.e. most adult humans, and as deriving its legitimacy at least in part from such consensus. But humans, taken across different cultures, include stalwart defenders of precisely the kinds of cruel behaviour listed above. Thus, quite apart from the question of whether overlapping consensus among only a minority of its subjects (and an interested minority at that) *should* legitimate a conception of justice, it is highly unlikely that an expanded capabilities model could be defended in this way.

Of course, the capabilities approach need not stand or fall with Rawlsian overlapping consensus. Instead, more in line with the earlier Nussbaum (1990), the list of capabilities could derive its authority directly from an objective moral stance on the value of human (or other) flourishing and a “thick vague” conception of what that flourishing involves.<sup>10</sup> However, such a shift could come at a heavy cost: for Nussbaum as for Rawls, one central motive for seeking overlapping consensus on a conception of justice is that it is likely to bring stability in practice.<sup>11</sup>

The second difficulty concerns the use of nonhuman animals for medical research, which Nussbaum (2006, pp. 403-5) describes as a genuinely tragic conflict. Even once the many unnecessary harms currently imposed are excluded as unjust,<sup>12</sup> there remains research necessary to tackle serious human medical conditions, but which unavoidably sacrifices the core interests of individual sentient nonhuman animals.

Here, I suggest, the capabilities approach has two theoretically workable options, although Nussbaum is reluctant to take either. Consider the argument as follows. Medical research is necessary to aid human beings who have fallen below some threshold level of opportunity for health. The question presented by Nussbaum as tragic is whether individual nonhuman animals should have their basic capabilities sacrificed

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<sup>10</sup> The term “thick” is used in contrast to the Rawlsian liberal account, on which primary goods (rights, liberties, opportunities, income and wealth, the social bases of self respect) serve, for political purposes, as a proxy or “thin” conception of the good. However, the capabilities list is vague in refraining from prescribing any particular way of life, as would, for example, a comprehensive religious view of the good. (See Nussbaum 1990, p. 210; Rawls 1971, p. 54)

<sup>11</sup> See for example Nussbaum 2000, p. 152; Rawls 1993, pp. 385-394

<sup>12</sup> For example, replication of research by competing scientists. For a discussion of this point, see Nussbaum 2006, pp. 403-4, or Nuffield Council of Bioethics 2005

in pursuit of justice for those unfortunate humans. But it could equally well be asked whether otherwise healthy humans should be used in the same way in pursuit of the same aim. The capabilities theorist, like most theorists of justice, would say no. There is an almost universally accepted unacceptability to using others as a means in this way. Individuals can demand threshold-level capabilities but only up to the point where providing them would actively undermine the key capabilities of other individuals.

With this in mind, the capabilities theorist has two options. One is to affirm that the entitlements of individual nonhuman animals are on a par with those of individual humans. Then, for consistency, the approach would have to rule against nonhuman animal testing. Nussbaum stops short of this.<sup>13</sup> The other option – from which she also explicitly refrains – is to take a stance on the moral *inequality* of humans and nonhumans, perhaps by appeal to our greater complexity or self-awareness.<sup>14</sup> The claim would then be that, although it is of moral value that an individual sentient animal, ecosystem or species flourishes, it is more so that a human individual does so. Thus, although they could not be sacrificed for any lesser end and only for this one given an unavoidable clash, nonhuman interests are ultimately trumped by human interests.

The final conflict is more general: are there adequate resources at our disposal to do justice to all humans, nonhuman animals, species and ecosystems, in the sense of meeting their claim to threshold-level capabilities? That is, even leaving aside more immediate practical difficulties, such as vested interests and the absence of political will, is even a mostly “just world” in this expanded sense achievable? Or is there such scarcity that, to anticipate the discussion of the next full section, we are outside the circumstances within which capabilities justice is even theoretically possible and so, arguably, outside those to which the model is even applicable?

There are some grounds for optimism. To some extent, given the interconnection of humans and the natural world, the two projects – justice for humans and justice for

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<sup>13</sup> Nussbaum 2006, pp. 403-405. Schinkel (2008, pp. 50-62) argues that this is inconsistent with Nussbaum’s own claim (2006, p. 315) that on her model ‘no creature is being used as a means to the ends of others, or of society as a whole’.

<sup>14</sup> Nussbaum 2006, p. 380-4

nonhumans broadly understood – should complement each other. At the widest level, in provoking catastrophic climate change or global scale ecosystem collapse, we are destroying ourselves. Moreover, Nussbaum (2000, p. 80) specifies as her eighth central capability, Other Species, ‘[b]eing able to live with concern for and in relation to animals, plants, and the world of nature’. However, Other Species is the most controversial of Nussbaum’s capability categories.<sup>15</sup> Nor is it plausible, even if it is admitted to the list, that human flourishing requires the preservation of *all* species. Nor does the fact that we need the “natural world” in general mean that our interests will not clash with those of small-scale ecosystems within it. Indeed, the *Living Planet Report* (Hails et al. 2008, p. 4) identifies five direct, anthropogenic threats to biodiversity: ‘habitat loss, fragmentation of change, especially due to agriculture; overexploitation of species, especially due to fishing and hunting; pollution; the spread of invasive species or genes; climate change’.

Of course, much of this destructive approach to other species and ecosystems has served luxury human ends and so does not strictly speaking demonstrate a conflict between humans’ capability claims and those of species and ecosystems. However, adequate support for all species under threat of extinction and active provision of capabilities for all ecosystems would be hugely expensive. A similar point can be made regarding individual nonhumans. To give the capabilities approach the benefit of the doubt, we might take as resolved the question (to be debated below) of whether Schlosberg can convincingly reject Nussbaum’s conclusions on prey-predator relations. But even without the need for wholesale intervention, fulfilling positive capabilities-based responsibilities would involve the provision of adequate food, space and health (or at the very least palliative) care.

Even remaining agnostic on the empirical question of whether such measures could currently be afforded alongside securing human capabilities, they certainly would

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<sup>15</sup> See, for example, Wolff and de-Shalit (2007, esp. p. 56) on feedback from interviews on the capability categories.

not remain so if the human population continued to grow.<sup>16</sup> As Hails et al. (2008, pp. 22-23) point out, our ecological footprint (the amount of biologically productive land and water needed to meet human resource and waste demand) is a function of population size, goods and services consumed per capita, and the resource- and waste intensity of those goods and services. Given a big enough human population, even increased waste-efficiency and a reduction in consumption to the levels required for threshold level capabilities would be insufficient to prevent ecological overshoot (of ecological footprint over the earth's capacity), never mind achieve positive capabilities justice for nonhuman animals, species and ecosystems.

That is not to say that the capabilities theorist must choose between justice for humans and justice for nonhumans. The approach can avoid widespread conflict between legitimate claims, but only if its advocates are prepared to acknowledge that institutionally unchecked human population growth constitutes an injustice to nonhumans. Then, depending on whether the resources of the earth *are* currently such as to accommodate capabilities justice for nonhuman animals, species and ecosystems as well as for humans, the approach would have to require a programme of either global population reduction or stabilisation. It would of course be a challenge to achieve this whilst upholding key human capabilities such as Bodily Integrity, which includes 'opportunities... for choice in matters of reproduction' (Nussbaum 2000, p. 78). However, it is not necessarily impossible. States and global institutions can use incentive structures and education rather than coercive measures, and it is at least arguable that opportunity for reproductive choice is ensured if there is a genuine choice of having (or *not* having) even one or two children.

### ***Flourishing as not being crunched***

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<sup>16</sup> It is currently predicted to do so: from 6.8 billion in 2010 to 9.15 billion in 2050 according to the Optimum Population Trust ([www.optimumpopulation.org](http://www.optimumpopulation.org))

So far, so promising for the capabilities approach. However, other areas of conflict prove harder to resolve. The first is between individual sentient animals, specifically prey and predator.

This is a problem for Nussbaum's account. In correcting her mistake about what it means to flourish as a tiger – '[t]igers hunt, and eat other animals; they only play with balls when deprived of that capability' – Schlosberg (2007, p. 152) presents an objection to her already counterintuitive proposal of policing nature to secure the entitlements of individual animals. However, it is also a difficulty for his project of expanding the capabilities approach to include species, ecosystems *and* individual animals, because it is hard to see how full-blooded capabilities justice could be done to individuals including the "tender gazelle" without such policing. In his 2007 monograph, Schlosberg suggests that the difficulty does not arise because failure to protect the gazelle from the tiger – or, indeed, supplying it to the tiger in the zoo – is no injustice to the individual gazelle. However, the explanation for this is highly problematic and indeed is implicitly rejected by his recent unpublished work.<sup>17</sup>

The difficulty is this: having accused Nussbaum of conflating species and ecosystems (Schlosberg 2007, p. 148), Schlosberg appears to conflate the flourishing of the individual and the flourishing of the species in attempting to avoid sanitising nature whilst preserving a concern for *all* individual animals. Recall his claim that 'part of the flourishing of animals is to be the protein for other life forms... To be food for others is the essence of functioning for some beings. Acorns can become oak trees, or they may become squirrel food; gazelles can breed in social units, or may become tiger food.' This is convincing, so long as it concerns the species as a whole, whose flourishing in a

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<sup>17</sup> Schlosberg (unpublished) clarifies his position in a paper to the American Political Science Association, 2009, acknowledging that individual animals *are* sacrificed for the stability of overall ecosystems and accordingly that there is potential for conflict between capabilities. However, he remains committed to the aim of recognising the claims of ecosystems, species *and* individuals, arguing that potential conflicts should not be taken as a reason to reject a notion of justice to natural systems and that ways of addressing the conflicts can be further developed going forward. But if the arguments of the next section ("Outside the circumstances of justice?") are correct, the situation is so far from being one in which conventional capabilities justice could ever be achieved for all, as to call for a revised approach.

context of limited resources will presumably benefit from population control and the weeding out of the least fit.

However, it is hard to see how a painful death courtesy of a tiger can be said to contribute to the flourishing life of *that individual gazelle*, any more than heavy work loads and having no control over their own lives could be said to contribute to the flourishing of individual slaves in Ancient Rome, even if it was integral to maintaining the overall social system. If nonhuman animals, as sentient individuals, have interests in anything, they have interests in avoiding pain and suffering. It may be integral to the system that the gazelle be hunted down; it may be part of the functioning of the species that it is food for another species; but to say that it is part of the functioning of that particular gazelle to be so overlooks precisely the concern for the capacity of individual animal lives to go better or worse that Nussbaum wants to recognise.<sup>18</sup>

### ***Killing the animal, saving the system***

Schlosberg's expanded model also faces conflict between the capabilities-based entitlements of individual nonhuman animals and those of species or ecosystems. Here, it is helpful to distinguish between human-caused conflicts, on which I suggest the approach can convincingly adjudicate, and natural conflicts, which present it with a widespread and more substantial difficulty.

Beginning with the former, Elizabeth Anderson (2004, pp. 277-9) makes the point that advocates of animal welfare, advocates of animal rights and advocates of environmental ethics want different, often conflicting, things. She cites feral pigs destroying the Hawaiian rainforest and rabbits in Australia. Such cases also appear to present Schlosberg's capabilities model with a dilemma. Protecting the rainforest requires us to kill the pigs; protecting the Australian bush requires us to kill the rabbits, which has historically been done in a particularly painful way. Similarly, attempts in Scotland to preserve the native red squirrel from extinction include encouraging land

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<sup>18</sup> Cochrane (2007, pp. 314-6) makes a parallel point.

owners to kill grey squirrels.<sup>19</sup> Such methods fail to respect the capabilities-entitlements of individual nonhuman animals but not to interfere would allow an ecosystem or species to struggle. How can an approach committed to providing threshold-level capabilities for both possibly adjudicate?

It can, I suggest, because of something specific in the way the situation arose: humans have undermined the integrity of an ecosystem and threatened native species by introducing a destructive non-native species. Thus, these are second best situations, where an injustice has *already* been done. Acknowledging this, the capabilities approach can propose a second-best solution: an attempt to provide rectificatory justice to the species or system (restore threshold-level capabilities) whilst minimising further injustices in the process, probably by using the least painful method available of extermination or sterilisation.<sup>20</sup>

The zoo example, on which Nussbaum and Schlosberg disagree, is another second-best situation, although a still more problematic one. Being kept in captivity undermines the tiger's capacity to live a full flourishing life. The question then becomes one of rectifying an existing injustice (restoring capabilities) so far as possible whilst minimising the impact on other subjects of justice. Unless it is feasible to release it into its natural habitat, this might, other things being equal, mandate painless extermination of the tiger. But a case can be made against this by appeal to the *species*. Captive breeding is sometimes a response to an earlier injustice: the fact that humans have, through some combination of climate change, hunting and habitat destruction, threatened the survival of a species of nonhuman animal.<sup>21</sup>

This situation is thus doubly second best. At first glance, in parallel with the Anderson cases above, the least unjust solution might appear to be a diet of free range, humanely killed meat, combined with some way of mimicking the tiger's hunting experience (although the Knut experience suggests that such programmes should be

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<sup>19</sup> See for example [www.red-squirrels.org.uk](http://www.red-squirrels.org.uk)

<sup>20</sup> Singer (2003, p. 59) also makes the case for painless sterilisation in such situations.

<sup>21</sup> For recent data on the impact of human activity on nonhuman species, see Hails et al., 2008, pp. 6-13.

undertaken warily). However, this glosses over a distinction between this case and those above. The pigs, rabbits or grey squirrels pose an innocent but severe threat to other subjects of justice. It is therefore in line with many intuitions in parallel human cases that they can legitimately be sacrificed to protect those under threat, in this case the ecosystem, native species and native individual animals.<sup>22</sup> Here, by contrast, the animal sacrificed does not itself constitute the threat. Is it not then unacceptable to use it as a means to feed the captive tiger? If it is, the capabilities approach might have to mandate feeding captive tigers alternative proteins, derived from vegetable sources, which seems decidedly unsatisfactory by way of rectification to the individual tiger.<sup>23</sup>

However, conflicts arise not only as a result of human action but also, on a massive scale, because of the way the natural world operates. This is brought out by the discussion above of the tiger and gazelle. Schlosberg, as we saw, is convincing on what is required for the flourishing of the tiger, individual and species, and of the *species* gazelle. He also points plausibly to the contribution of predation to the flourishing of the ecosystem within which tiger and gazelle co-exist. Nonetheless, it is entirely implausible that being eaten by a tiger could contribute to the flourishing of the individual gazelle. In other words, doing justice to the individual gazelle is not only incompatible with doing justice to the individual tiger, but also with doing justice to the gazelle's own species, or a given population within it.

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<sup>22</sup> Consider, for example, arguments in favour of late abortion when the mother's life is in danger or Regan's example (1983, pp. 293-5) of the gun-wielding child.

<sup>23</sup> Cecile Fabre has brought to my attention the related question of whether we should require our pet cats and dogs to be vegetarian. This prompts the wider point: is keeping pets unjust? Without space for a full discussion, I will note on the broader point that the conditions in which many pets are kept clearly undermines their key capabilities (e.g. caged birds or rodents). It is at least arguable that other pets, who can be given scope to live relatively freely and who have bred over generations to live with humans, can have a fully flourishing life. On the narrower question, preventing cats from killing for food whilst feeding them meat from ill treated animals raises exactly the kind of charges of inconsistency and sanitisation that Schlosberg (2007, p. 150) raises against Nussbaum. However, given that domestic cats already pose a threat to bird populations, it seems maintaining rather than correcting an injustice to encourage them to hunt their own food. Even free range meat looks like an injustice on the same grounds as feeding it to the captive tiger. So perhaps the capabilities theorist does have to recommend feeding carnivorous pets meat substitutes. This, however, re-opens the broader question. Can a cat have a fully flourishing life if it is vegetarian and effectively prevented from hunting, i.e. without injustice being done to other animals? If not, then the capabilities theorist might have to conclude that it is unjust to keep pets.



A possible response would be to stress, as Schlosberg does, that individuals flourish within ecosystems and species. The survival of (and so flourishing of) each individual gazelle depends on the survival of the species, but this does not show that there is no more to the flourishing of each sentient individual than that of the species, or that the two cannot conflict. Consider a parallel case: ten people in a lifeboat which can only hold nine. The survival of any depends on one going overboard. Thus it can be said to be in each individual's interest that one be sacrificed. It is not, however, in any individual's interest that *she* be sacrificed.

According to Schlosberg (2007, p. 152), 'a focus on systems gets us away from dilemmas, such as doing justice to individual animals in a larger ecosystem'. But what his "focus" on systems actually comes down to in such situations is *not* doing Nussbaumian, capabilities justice to individual animals. This, as with the clashing claims of prey and predator but unlike those of humans and nonhumans, does indeed look like a case of tragic conflict.

### ***Justice to which ecosystem?***

The fourth problem is also specific to Schlosberg's expansion of the capabilities approach beyond individual nonhuman animals. It becomes apparent when we ask to *which* ecosystems we are supposed to be doing justice. As already noted, at the broadest level the whole world is an ecosystem, of which we ourselves are a part and which we need in order to survive. Within this, individual ecosystems are not fixed or finite. They are constantly developing as the beings within them act, develop and respond. Ecosystems also develop and evolve in response to external events, some of which are naturally caused, others of which are caused by the behaviour of sentient nonhuman animals, and still others of which are caused by humans.

Given this, there are two related dangers. The first is that attempting to uphold the threshold-level capabilities of those ecosystems could involve futile and ultimately counterproductive attempts to hold time still. The second is that of ruling out *all* human interaction with the natural world. Schlosberg, who does not present a Nussbaum-style

list, owes us an account of the central capabilities of ecosystems which can avoid both of these dangers whilst still maintaining the idea of fulfilling some positive duty to ecosystems. If such an account cannot be produced, the capabilities theorist might have to consider other ways to uphold the claims of the natural world, for example following Baxter (2005, pp. 127-131) whose account of ecological justice as impartiality takes populations within at least nonsentient species to be the ‘appropriate bearers of claims to environmental resources’.<sup>24</sup>

However, the idea of doing positive justice to species (or populations within them) is also problematic, given the non-anthropogenic processes of change also affecting them. A great many extinctions *are* anthropogenic. This, already common knowledge, is abundantly and depressingly confirmed by Hails et al. (2008, pp. 2-13).<sup>25</sup> But not all are. What happens if a species goes out of existence entirely free from human interference (an event which is perfectly plausible although admittedly harder to foresee – and harder still to identify – as the impact of climate change increases)? Does institutional failure to prevent this really constitute an injustice, especially given that it is part of the process of evolution which upholds that one giant ecosystem, the world, within which we all exist?

### **Outside the circumstances of justice**

The above conflicts are more than merely practical difficulties with implementing capabilities justice, understood as underwriting threshold-level capabilities, for nonhuman animals, species and ecosystems. They are, I suggest, so much a product of

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<sup>24</sup> Along these lines, the capabilities approach might identify species (but not ecosystems) as the subject of justice, but specify it as a *prima facie* injustice to the species if a population within it is destroyed or maimed by institutional or institutionally condoned human action. To avoid destroying populations within an existing ecosystem, it will generally be necessary to avoid destroying the ecosystem. However, if an ecosystem has already been destroyed or changed beyond recognition, the requirement would not necessarily be to replace the original, but rather to attempt to find a place within the new system, or elsewhere, for the evicted population, or failing that to make efforts to conserve the species in its other populations.

<sup>25</sup> According to the Living Planet Index, vertebrate species populations declined by nearly 30 per cent from 1970 to 2005, while human demand on the biosphere more than doubled from 1961 to 2005.

the combination of this understanding of justice and the circumstances within which the subjects of the expanded approach find themselves, as to constitute a more fundamental problem.

Consider how the situation for which the capabilities approach was originally designed differs from those in which Nussbaum, and especially Schlosberg, operate. The ideal of the just modern human society is cooperation for mutual advantage and individual flourishing for all members. We are assumed to be in circumstances within which that is broadly possible, at least in theory: we are not entirely altruistic and our luxury demands exceed the resources at our disposal, but our needs are sufficiently compatible and our resources sufficiently adequate that it would be at least theoretically possible to meet the threshold entitlements of almost all.<sup>26</sup> The very functioning of “natural” societies, or ecosystems, however, revolves around the sacrifice of the individual.

There are two related points here. Firstly, certain individual nonhuman animals are in a state of persistent conflict. This is not a new point. For example, Baxter (2005, p. 87) stresses the need to revise the concept of justice to accommodate entities ‘which routinely attack and harm moral agents... as the result of the workings of their inner nature’. However, it is a problematic one for the project of expanding the capabilities approach: given the plausibility of Schlosberg’s view that predation is a central component of the flourishing of a tiger, combined with the *implausibility* of the idea that being painfully killed is compatible with the flourishing of an individual gazelle, any project targeting threshold-level capabilities for *all* individual nonhuman animals appears doomed from the outset.

The point is not that there are some tragic conflicts. Even a humans-only theory of justice will face tragic conflicts. Drawing on Dworkin (2000, p. 60-61), consider those unfortunate individuals who are so handicapped that their capabilities can only be increased at huge cost to society and then not necessarily to threshold level. However,

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<sup>26</sup> These are broadly the circumstances of justice outlined by Rawls (1971, pp.109-110), drawing on Hume (1740, pp. 494-5).

these are exceptions in the human case. Once the model is extended to include nonhumans, conflicts occur consistently between prey and predator even when each is entirely normally functioning. Indeed, they do so precisely *because* the flourishing of individual animals (as a species-norm, not an exception) requires the undermining of the capabilities of others. By contrast, although humans are depressingly given to the destruction both of each other and of other species, we do not in general need to do so in order to flourish.

Secondly, relatedly, the standard capabilities approach eschews strong communitarianism. It avoids assigning value to human social systems, whilst acknowledging the *instrumental* importance of socio-political contexts to the individuals within them.<sup>27</sup> However, Schlosberg's argument rests on the view that the flourishing of ecosystems cannot be reduced to that of the sentient individual animals within them. But if individual nonhuman animals, species and ecosystems *cannot* simultaneously have their capabilities-based entitlements met, because of inevitable and widespread conflict between those entitlements, the situation is no longer one hampered only by moderate scarcity and selfishness, so that a system of distributive justice is both necessary and theoretically workable. It is one in which justice, understood as the positive guarantee of some threshold level flourishing for all, is ruled out by the very nature of its subjects.

### **Where now for the capabilities approach?**

The main aim of this paper was to assess whether the capabilities model, as expanded by Nussbaum and again by Schlosberg, could live up to its highly compelling promise

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<sup>27</sup> Schlosberg himself is an exception, appealing to the capabilities approach to uphold the claims of human communities as well as human individuals (Schlosberg 2007, esp. pp. 35-37 and 92-6, and unpublished). This goes some way towards explaining why he does not see the incompatibility of individual and species or ecosystem entitlements as a particular impediment to expanding capabilities justice to the nonhuman world. But it does not solve the problem: either the flourishing of human communities does not routinely require the suppression of individual capabilities, in which case there remains a key difference between the human and nonhuman situations, or it does, in which case Schlosberg has more difficulties rather than less. Then, in the human as in the nonhuman case, justice, understood as the positive provision of threshold capabilities, would be simply impossible.

of doing justice to humans, nonhuman animals, species and systems. I have concluded that it cannot. Before ending, however, I wish briefly to consider the question of how the capabilities approach might progress beyond this impasse.

It could, of course, limit its ambitions and assign the protection of institutionally-backed justice either to only individual nonhuman animals or only to species and ecosystems, leaving the protection of the other to individual duties. The former is Nussbaum's strategy (2006, p. 357): whilst expanding the sphere of justice only to sentient individual nonhuman animals, she allows that the survival of a species could have 'aesthetic significance, scientific significance or some other sort of ethical significance'. The latter might be defended as one natural expansion of Schlosberg's position.

However, there are difficulties. Firstly, the problems raised above for the expanded capabilities approach were not limited to conflicting claims of individuals on the one hand, and species or ecosystems on the other. Rather, it was argued that the capabilities claims of individual animals would be in persistent conflict, and that the whole notion of doing justice to ecosystems was problematically ambiguous.

Secondly, there is a difficulty with the status of the individual duties suggested above. Their aesthetic, scientific or other ethical significance might give us, as individuals, a duty not to destroy species or systems (or, conversely, not to harm individual animals). However, those who did not accept such duties could hardly be relied upon to fulfil them, without institutional authority to demand it. There might be scope for at least *some* institutional protection for species and ecosystems within Nussbaumian societies, or conversely for individual nonhuman animals in a society where only species and systems have direct claims on the basic structure of society. That is, in the same way as Derek Bell (2006, pp. 382-402) suggests that some principles of ecological justice could be built into a Rawlsian liberal state: for reasons grounded in the comprehensive ecological doctrines of some members of that state. However, this would be limited, being contingent on there being enough ecologically motivated individuals. Moreover, such institutional duties would not be the 'first virtue

of institutions' (Rawls 1971, p. 3) and could only come second to the claims of those protected by justice.

Thus, both possibilities have difficult implications: on the one hand, at least a *prima facie* case for radical and wholesale transformation of the natural world to protect individuals but no guarantee of state protection for endangered species and/or ecosystems, especially those not containing sentient animals; on the other, potential state non-interference with severe harm to individual animals (from bear baiting to factory farming) so long as the core capabilities of species or systems were not thereby threatened. Such implications are particularly problematic for any capabilities theorist hoping to expand the model whilst retaining Nussbaum's Rawlsian allegiance. Given the conflict with what many people, on either side, actually regard as important, it seems unlikely to the point of impossibility that overlapping consensus could be achieved on either strategy. However, they also reflect a more general quandary for the capabilities theorist.

This, put bluntly, is that both Nussbaum and Schlosberg seem to be onto something. Is it an injustice if an oil spill causes the painful death of a polar bear and neither state governments nor international institutions do anything to prevent it, if a snow leopard is legally hunted down, or if a calf is kept (again legally) in dark isolation before being bled to death? I am inclined to think it is, although the former raises questions beyond the scope of this paper, regarding the applicability of rules of justice outside existing formalised institutional structures.<sup>28</sup> But there seems to be something *further* going wrong in the first two cases that is not captured by the harm to the individual: something to do with the fact that, as a result of human activity, the *species* polar bear and snow leopard are likely to become extinct. The challenge is to capture both of these elements without giving rise to widespread tragic conflict. The rest of this

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<sup>28</sup> On the debate between cosmopolitans and political liberals, see for example Beitz 1975 and 1983, Pogge 2002, Nagel 2005 and Caney 2007. However, this paper takes Nussbaum's cosmopolitan position as its starting point.

paper will outline two possible ways in which the capabilities approach might attempt to meet it.

### ***Risk and flourishing***

One option for the approach would be to remain true to Schlosberg's idea of capabilities justice as upholding core capabilities for all, but find a better way to demonstrate that this is compatible with widespread failure to protect prey from predator. One way in which this might be done is by focusing on the extent to which *risk* to key capabilities can, because it is itself necessary to flourishing, be compatible with justice.

Consider a recent proposal by a group of scientists: that Old World cheetahs be introduced into North American grasslands to replicate the role played by the extinct American cheetah (Donlan et al, 2006, pp. 661-9).<sup>29</sup> Part of their reasoning is that predation by cheetahs 'purportedly played a pivotal role in shaping the pronghorn's astounding speed' and their absence has left the pronghorn (a mammal resembling an antelope) 'overbuilt... in precisely those traits that make it so distinctive among North American mammals'. The relevant idea, for present purposes, is that the pronghorn has attributes it is unable fully to use. This could suggest that the individual cannot flourish fully as a pronghorn unless it is given a reason to run fast, i.e. a genuine threat of being killed by a very fast big cat. Thus, quite apart from the benefit to the species, it might be in the individual pronghorn's interest to run a *risk* of being killed by a cheetah.

This is not entirely out of line with the experience of some humans, for example high altitude mountaineers, who have developed a plan of life on which flourishing involves taking certain major risks, although it remains as implausible that it is part of the healthy individual pronghorn's flourishing actually to be eaten, as it would be to say that it contributed to the flourishing of free climber John Bachar that he fell to his death from Dike Wall (*The Economist* 2009). Indeed, in a closer parallel still, James Hatley

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<sup>29</sup> My thanks to Paul Knights for bringing this research to my attention.

(2004) has highlighted the significance of wilderness areas by appeal to the ‘uncanny goodness’ of being ourselves sometimes vulnerable to predation.<sup>30</sup>

Thus, the capabilities theorist might resurrect Schlosberg’s attempt to reconcile predation with the flourishing of the individual gazelle. However, any such argument would require a huge amount more work, both scientific and philosophical. Firstly, there are important distinctions between human risk-takers and prey animals: the potentially valuable risk to the pronghorn is both a species-norm (rather than specific to the individual and, for many human risk-takers, self-chosen) and a significantly high one run as part of its everyday life (unlike in the case of humans visiting wilderness areas). It is considered explicitly unjust on the capabilities approach that individual humans should *have* to take high risks with some capabilities in order to secure others.<sup>31</sup>

Secondly, it is far from clear that Donlan et al. either show or intend to show that the *individual* pronghorn is benefited by exercising its capacity to run at speed; inability fully to utilise evolutionarily acquired traits might disadvantage only the species. Thirdly, it would also have to be demonstrated that predation was the only way in which the pronghorn could be enabled to exercise its capacity for speed. Finally, a parallel case would have to be made for prey-predator relations across the board.

### ***Justice as collective non-interference***

The second possibility also draws on the idea that justice for nonhumans, though potentially equally important, need not be the same as justice for humans. However, it involves a significant modification to the capabilities approach. The basic idea of the approach is that “we”, as institutionalised collectivities of human beings, owe each one of us the social and material support needed to achieve threshold-level capabilities. Certainly, the potential to flourish of nonhuman animals and the so-called natural world could also ground strong entitlements. But perhaps what they are owed (precisely

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<sup>30</sup> Simon Hailwood (unpublished) has used Hatley’s idea of edibility as necessary to embodied animality as an objection to Nussbaum, who proposes preventing predation but also emphasises that very embodied animality among the commonalities of humans and nonhumans.

<sup>31</sup> Consider Sen’s example (1999, p. 8) of Kader Mia, who was obliged to risk his life in order to work.



because that is how we can best respect their integrity) is simply that humans not undermine their central capabilities.

That is not to say that those human duties (not to undermine nonhuman capabilities) are individual duties beyond the realm of institutional control. Quite the contrary: the idea, broadly, would be that the impact of humans on the nonhuman world falls within the scope of justice, while intra-nature relations do not. This might be expressed by appeal to a collectivised version of the distinction between positive and negative duties.

To elaborate, consider how the capabilities of individual animals, species and ecosystems are undermined by humans acting on various levels: individually, as when a child torments a kitten, a farmer confines a veal calf or a tourist leaves a cigarette alight in the Australian bush; institutionally, as when a burger chain uses crate-grown meat or government-authorised logging firms destroy the rain forest; and collectively, as when anthropogenic climate change threatens the survival of the polar bear. On the suggested model, the capabilities approach could defend a duty of justice to ensure that such harms were prevented and to compensate for past injuries, as far as possible, through restoration of capabilities. Political institutions would be required to be framed to fulfil such responsibilities. However, it would not count as a failure of justice if human institutions failed to protect the gazelle from the tiger, at least in their natural habitat.

Given the distance between this model and Nussbaum's core idea of justice as the positive guarantee of threshold-level capabilities for all, some might quibble with my using the term "justice" for nonhumans at all. However, what is being suggested could appropriately be termed justice, *if* justice is to be understood as institutionalised respect for the basic claims that each of us has on the political and social structures under which, voluntarily or involuntarily, we find ourselves. That is not to say, however, that the terminology should not reflect the distinction, perhaps by referring to justice as non-interference, or protective justice, to exclude the explicitly distributive element owed to human beings.

By focusing on collective non-interference rather than active provision of threshold-level capabilities, it would be possible to avoid Nussbaum's conclusions on the sanitisation of nature, without taking the implausible line that being painfully eaten by a tiger does not undermine an individual gazelle's flourishing. It would also render the project of doing justice to nature far less costly, in terms of the opportunity also to do justice to humans. Moreover, the capabilities approach would no longer have to specify exactly what would be required to raise each ecosystem to threshold level. Nor, indeed, would it be required to preserve species under threat for non-anthropogenic reasons.

However, not all is gained: justice, on this conception, would still require such changes in human behaviour as to render cross-cultural overlapping consensus highly improbable. Nor would the capabilities approach be absolved of the need expressly to accommodate the issue of population. If the human population continues to grow, a point will inevitably be reached where simply providing *all* humans with food and housing could plausibly require sacrificing ecosystems, species and, through habitat destruction, individual nonhuman animals.<sup>32</sup> Nor can the problems raised by the nebulous nature of ecosystems entirely be evaded simply by ruling that humans should "leave ecosystems alone". Humans are part of ecosystems, and need them. Thus, the capabilities theorist, if she is to retain a focus on systems rather than species and populations, still owes us an account of the central capabilities of ecosystems which can explain the injustice of (say) dumping pollutants into a delicate river ecosystem or mass-scale logging in a rainforest, without in the process ruling out all human interaction with the natural world.

Moreover, the modified approach faces at least two challenges of its own. The first is as follows. The approach suggested would advocate positive duties to secure capabilities for those individual animals, species and ecosystems that are already the victims of injustice, while those to whom there has not been any previous injustice

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<sup>32</sup> Recall the earlier discussion of Hails et al., 2008

should simply be protected from human action that would undermine their basic capabilities. But, given how much harm we have already done to the natural world, is not every situation second best?<sup>33</sup> Is not the zoo example, above, simply an instance of an almost universal problem?

There is a possible response to this. Certainly, the level of damage already done is so great that we do plausibly owe positive restorative duties on a huge scale. However, not all ecosystems, and certainly not all individual “wild” animals, are owed such positive duties. Moreover, even in a world pervaded by injustice, there are advantages to being able to say what a just one would look like. The idea that a past harm is being corrected, albeit imperfectly, can be used to make sense of the decision to interfere in certain conflicts between species or systems and individuals but not others – and especially not in conflicts between individual animals in their natural habitat. However, it is questionable how long such a distinction could be maintained, given the across-the-board impact of global warming.

There is, moreover, a subpoint to be acknowledged: at least some human use of animals (for example, the keeping of some pets) might be compatible with justice because it would not involve undermining central capabilities.<sup>34</sup> However, such nonhuman animals might plausibly be owed positive provision of key threshold-level capabilities as they would be unable fully to fend for themselves.<sup>35</sup>

The second challenge is theoretical as well as practical. It might be argued that adopting this collective positive-negative distinction is the best way of maintaining the overall system within which nonhuman animals flourish. Thus it could ultimately be necessary in order to respect their potential to do so. But, in terms of philosophical consistency, can the line be drawn at human beings, both in terms of what is owed and what actions can legitimately be curtailed by institutions?

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<sup>33</sup> Nussbaum (2006, pp. 373-5) makes a similar point in rejecting a positive-negative duty distinction with respect to nonhuman animals.

<sup>34</sup> See Footnote 23.

<sup>35</sup> Indeed, Nussbaum’s account more plausible in its application to animals under direct human control than to those which are not, although, as we have seen, she is unconvincing (and arguably inconsistent) on the circumstances under which such control is itself justifiable.

To draw such a line, the capabilities approach would have to provide an account of what it is about humans (all humans) that requires that they be given the resources and social structures necessary to overcome even natural impediments to flourishing, when nonhuman animals (however advanced in capacities) can demand only that humans not interfere with their potential to flourish. It is not immediately clear that such an account is available. Given that the starting point for the approach is the moral significance of the flourishing of *each* subject of justice, human or nonhuman, it is hard to see why the residents of a human village decimated by a hurricane should be entitled to state support, but a population of chimpanzees whose habitat is similarly destroyed not be so. Equally, why should a deer run over by a car have a claim on us for a quick and painless death, but not a deer maimed and abandoned by some natural predator? In either case, to paraphrase Nussbaum (2006, p. 379), it is the same for the deer.<sup>36</sup>

It is worth noting, before closing, that some of these points might be resolved within a version of the capabilities approach which incorporated elements of both the possible strategies above: that is, which adopted a collective interference approach but defended it at least in part by appeal to the importance to individual animals of running certain risks. But even if this argument could be adequately filled out, the chimpanzee and the deer would remain problematic cases. The chimpanzee is threatened not by a longstanding predator with whom it shares an established system; and to euthanise the deer would not be to interfere in the relation between it and the predator which has now abandoned it. Thus, the suggested ways forward for the capabilities approach, whether taken separately or as a hybrid, remain very much that: tentative suggestions.

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<sup>36</sup> One response to the second point appeals to the fact that the driver is a moral agent. This is the line taken by Regan (1983, pp. 284-5). However, his rights view is distinct from the model proposed here, as it focuses on individual humans as duty-holders, rather than on the collective responsibility of institutions to uphold entitlements. Moreover, this leaves the problem of marginal cases: humans who are not moral agents. The capabilities approach would consider it the duty of the relevant human institution to protect the deer from capabilities-violations inflicted by severely mentally handicapped humans, or indeed by animals under human control. An account is therefore owing of why justice does not at least require euthanising the deer if a tiger has left it to a painful death, given it suffers as much either way. (It is also unclear how Regan would accommodate such harms by humans who are not moral agents.)

This paper has identified obstacles to the expansions of the capabilities approach proposed by Nussbaum and Schlosberg. It has also shown that these reflect an underlying impediment to any attempt to take capabilities justice, understood as defending the positive provision of certain capability entitlements for all subjects of justice, beyond the human. But that is not to say that we should abandon the capabilities approach altogether as a way of incorporating the claims of nonhumans into our political theory. I hope this last section has indicated as much. I remain convinced that this is an essential debate and one to which the capabilities approach has a great deal more to contribute. This paper is intended in the spirit of constructive criticism, to contribute to that process.

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### **References**

- Anderson, Elizabeth. 2004. 'Animal Rights and the Values of Nonhuman Life'. In *Animal Rights: Current Debates and New Directions*, ed. Cass Sunstein and Martha Nussbaum, 277-9. New York: Oxford University Press
- Barry, Brian. 2001. *Culture and Equality*. Oxford: Blackwell
- Baxter, Brian. 2005. *A Theory of Ecological Justice*. Oxford: Routledge

- Beitz, Charles. 1975. 'Justice and International Relations'. *Philosophy and Public Affairs*, 4: 360-389
- Beitz, Charles. 1983. 'Cosmopolitan Ideals and National Sentiment'. *The Journal of Philosophy*, 80: 591-600
- Bell, Derek. 2006. 'Political Liberalism and Ecological Justice'. *Analyse & Kritik*, 28: 206-222
- Caney, Simon. 2007. *Justice Beyond Borders*. Oxford: Oxford University Press
- Casal, Paula. 2003. 'Is Multiculturalism Bad for Animals?'. *The Journal of Political Philosophy*, 11: 1-22
- Cochrane, Alasdair. 2007. 'Animal Rights and Animal Experiments: An Interest-Based Approach'. *Res Publica* 13: 293-318
- Cowan, Tyler. 2003. 'Policing Nature'. *Environmental Ethics* 25: 169-182
- Deckers, Jan. 2009. 'Vegetarianism, Sentimental or Ethical?'. *Journal of Agricultural and Environmental Ethics*, Online First
- Diamond, Cora. 1978. 'Eating Meat and Eating People'. *Philosophy* 53: 465-479
- Donlan, C. Josh, *et al.* 2006. 'Pleistocene Rewilding: An Optimistic Agenda for Twenty-First Century Conservation'. *The American Naturalist*, 168: 660-681
- Dworkin, Ronald. 2000. *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge: Harvard University Press
- Hails, Chris, *et al.* eds. 2008. *Living Planet Report 2008*. Gland: WWF International
- Hatley, James. 2004. 'The Uncanny Goodness of Being Edible to Bears'. In *Rethinking Nature: Essays in Environmental Philosophy*, ed. V Foltz and R Frodeman. Bloomington & Indianapolis: Indiana University Press
- Hume, David. 1740. *A Treatise of Human Nature Vol. III: Of Morals*. In *A Treatise of Human Nature*, ed. L A Selby-Bigge. New York: Oxford University Press, 1888. Revised edition, 1978
- Nagel, Thomas. 2005. 'The Problem of Global Justice'. *Philosophy and Public Affairs*, 33: 113-147

- Nuffield Council of Bioethics. 2005. *The Ethics of Research Involving Animals*. London: Nuffield Council of Bioethics
- Nussbaum, Martha. 1990. 'Aristotelian Social Democracy'. In *Liberalism and the Good*, ed. B Douglass, G M Mara & H S Richardson. London: Routledge
- Nussbaum, Martha. 2000. *Women and Human Development*. New York: Cambridge University Press
- Nussbaum, Martha. 2006. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge: Harvard University Press
- Paterson, Tony. 2008. 'Knut is a Psychopath and will Never Mate, say Experts'. *The Independent*. <http://www.independent.co.uk/environment/nature/knut-is-a-psychopath-and-will-never-mate-say-experts-772865.html>. Accessed 10 September 2009
- Pogge, Thomas. 2002. *World Poverty and Human Rights*. Cambridge: Polity Press
- Rawls, John. 1971. *A Theory of Justice*. New York: Oxford University Press. Revised edition 1999
- Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press. Paperback edition 1996
- Regan, Tom. 1983. *The Case for Animal Rights*. Berkeley & Los Angeles: University of California Press. Revised edition 2004
- Schinkel, Anders. 2008. 'Martha Nussbaum on Animal Rights'. *Ethics and the Environment* 13: 41-69
- Schlosberg, David. 2007. *Defining Environmental Justice: Theories, Movements and Nature*. New York: Oxford University Press
- Sen, Amartya. 1992. *Inequality Reexamined*. Oxford: Oxford University Press
- Sen, Amartya. 1999. *Development as Freedom*. Oxford: Oxford University Press
- Singer, Peter. 1974. 'All Animals Are Equal'. In *Applied Ethics*, ed. Peter Singer. Oxford: Oxford University Press, 1986
- Singer, Peter. 2003. 'Not for Humans Only: The Place of Nonhumans in Environmental Issues'. In *Environmental Ethics: An Anthology*, ed. A Light and H Rolston. Oxford: Blackwell

Thadeusz, Frank. 2007. 'Is Berlin's Polar Bear Baby Too Human? Knut should be Killed, say some Animal Activists'. *Der Spiegel*.  
<http://www.spiegel.de/international/zeitgeist/0,1518,472480,00.html>. Accessed 10 September 2009

Wolff, Jonathan, and Avner de-Shalit. 2007. *Disadvantage*. Oxford: Oxford University Press

Obituary: John Bachar. 2009. *The Economist*.  
[http://www.economist.com/obituary/displaystory.cfm?story\\_id=14029915](http://www.economist.com/obituary/displaystory.cfm?story_id=14029915). Accessed 10 September 2009